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BRIEF ON MERITS

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1958

No. 40

TERRITORY OF ALASKA, *Petitioner,*

vs.

AMERICAN CAN COMPANY, FIDALGO ISLAND PACKING COMPANY, LIBBY, McNEILL & LIBBY, INC., NAKAT PACKING COMPANY, NEW ENGLAND FISH CO., P. E. HARRIS COMPANY, INC., PACIFIC & ARCTIC RAILWAY & NAVIGATION CO., and OCEANIC FISHERIES CO.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR THE PETITIONER.

J. GERALD WILLIAMS,
Attorney General of Alaska,
427 Alaska Office Building,
Post Office Box 2176,
Juneau, Alaska,

DAVID J. PREE,
Assistant Attorney General,
427 Alaska Office Building,
Post Office Box 2176,
Juneau, Alaska,

JACK O'HAIR ASHER,
Special Assistant Attorney General,
427 Alaska Office Building,
Post Office Box 2176,
Juneau, Alaska,

Counsel for Petitioner,
Territory of Alaska.

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OPINIONS BELOW.

The opinion of the Court of Appeals (R 77-89) is reported at 246 F. 2d 493.

The opinion of the District Court (R 56-67) is reported at 137 F. Supp. 181.

JURISDICTION.

The judgment of the Court of Appeals was entered on June 27, 1957 (R 91-92). A timely petition for rehearing filed on July 25, 1957 (R 92-94) was denied on December 4, 1957 (R 94). The jurisdiction of this Court rests on 28 U.S.C., Section 1254(1).

QUESTIONS PRESENTED.

The United States Court of Appeals for the Ninth Circuit has construed Chapter 22, Session Laws of Alaska, 1953, which repealed the Alaska Property Tax Act, as forgiving the liability of delinquent taxpayers for taxes accruing under that Act.

1. Whether the special saving clause, if the Court below is correct in construing it as exempting delinquent taxpayers from liability, is valid under the Due Process and the Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution and Section 9 of Alaska's Organic Act, 48 U.S.C. 78; § 48-1-1, ACLA 1949.

2. Whether the Court below correctly interpreted Section 2 of Chapter 22, Session Laws of Alaska, 1953, as a special saving clause which overrides the General Saving Statute of Alaska, Section 19-1-1, Alaska Compiled Laws Annotated, 1949.

3. Whether the District Court was correct in excluding evidence of the original House Bill No. 3 and Senate Bill No. 5, Twenty-first Session, Territory of Alaska Legislature.

STATUTES INVOLVED.

The statutory provisions involved are the following:

U. S. Const. amend. V:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

U. S. Const. amend XIV, § 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

48 U.S.C. Sec. 23, Sec. 2-1-1, ACLA 1949:

"Constitution and laws of the United States extended: Continuation of existing laws. The Constitution of the United States, and all the laws thereof which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States. All

the laws of the United States passed prior to August 24, 1912, establishing the executive and judicial departments in Alaska shall continue in full force and effect until amended or repealed by Act of Congress; except as herein provided all laws in force in Alaska prior to that date shall continue in full force and effect until altered, amended, or repealed by Congress or by the legislature."

48 U.S.C. Sec. 78, Sec. 48-1-1, ACLA 1949:

"Requirement of uniform taxes: Assessments. All taxes shall be uniform upon the same class of subjects and shall be levied and collected under general laws; and the assessments shall be according to the true and full value thereof, except that unpatented mining claims and nonproducing patented mining claims, which are also unimproved, may be valued at the price paid the United States therefor, or at a flat rate fixed by the legislature, but if the surface ground is used for other than mining purposes, and has a separate and independent value for such other purposes, or if there are improvements or machinery or other property thereon of such a character as to be deemed a part of the realty, then the same shall be taxed according to the true and full value thereof."

Section 19-1-1, ACLA 1949:

"Effect of repeals or amendments. The repeal or amendment of any statute shall not affect any offense committed or any act done or right accruing or accrued or any action or proceeding had or commenced prior to such repeal or amendment; nor shall any penalty, forfeiture or liability incurred under such statute be released or

extinguished, but the same may be enforced, continued, sustained, prosecuted and punished under the repealing or amendatory statute save as limited by the ex post facto and other provisions of the Constitution, in which event the same may be enforced, continued, sustained, prosecuted and punished under the former law as if such repeal or amendment had not been made."

Chapter 10, Session Laws of Alaska 1949, the Alaska Property Tax Act, appears in the Appendix, *infra*, pp. 1-29.

Chapter 22, Session Laws of Alaska, 1953:

"An Act to repeal the Alaska Property Tax Act enacted by Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949; excepting from repeal certain taxes and tax exemptions; and declaring an emergency.

"Be it enacted by the Legislature of the Territory of Alaska:

"Section 1. That Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, be and it is hereby repealed.

"Section 2. Section 1 of this Act shall not be applicable to:

(a) any taxes which have been levied and assessed by any municipality, school or public utility district under the provisions of Chapter 10, Session Laws of Alaska 1949, as amended, or which are levied and assessed during the current fiscal year of such municipality, school or public utility district; and

(b) any exemptions from the taxes referred to in subsection (a) of this section, which have

been granted under the provisions of Section 6(h) of Chapter 10, Sesion Laws of Alaska 1949.

"Section 3. An emergency is hereby declared to exist and this Act shall be in full force and effect for and after the date of its passage and approval."

STATEMENT.

1. In 1949, the Alaska Territorial Legislature enacted the first general property tax act of the Territory, which was Chapter 10, Session Laws of Alaska, 1949. The validity of the Act was challenged in extensive litigation, with the Act being finally upheld as constitutional.

During the pendency of these litigations, more than 8,689 taxpayers, among whom the appellees are numbered, became delinquent in excess of $1,290,000.00, while at the same time, 11,504 people voluntarily paid their taxes in excess of $400,000.00.

2. In 1953, the subject tax statute was repealed by Chapter 22, Session Laws of Alaska, 1953.

3. Between April and May of 1955, the appellant filed eight separate Complaints, seeking to recover a total amount of over One Hundred Seventy-five Thousand Dollars ($175,000.00) in taxes, interests and penalties which had accrued and were due and owing by the appellees for the years 1949, 1950, 1951 and 1952. (R 3, 8, 14, 19, 25, 29, 33 and 37.)

4. On either the last day or the day before the last day within which to answer appellant's Complaints, each appellee filed a separate, identical Motion to Dismiss, alleging:

"(1) That the Complaint does not state a claim against the defendant upon which relief can be granted.

"(2) That the action was not brought within the time required by law." (R 6, 11, 17, 22, 28, 32, 36 and 40.)

5. On May 5, 1955, the appellant filed a counter motion against four of the appellees requesting that the United States District Judge enter an order (1) striking the Motions to Dismiss filed by the defendants, and (2) requiring the defendants to answer the complaint within ten days thereafter. Appellant listed the following reasons for its motion:

1. That defendants' Motions to Dismiss fail to state the grounds therefor with particularity as is required by Rule 7(b), Federal Rules of Civil Procedure.

2. That the Statute of Limitations may not be raised on a motion to dismiss the complaint.

3. That the Motion to Dismiss is a dilatory proceeding. (R 7, 12, 18 and 23.)

At the hearing on appellant's Motion to Strike, the second ground was abandoned in view of *Suckow Borax Mines Consolidated, Inc. v. Borax Consolidated, Limited,* 185 F. 2d 196, 202 (9th Cir.). (R 41)

Appellees' principal argument in answer to appellant's contention that Rule 7(b) had not been complied with was that their Motion to Dismiss conformed to Form 19 of the Appendix Forms to the Federal Rules of Civil Procedure and was therefore stated with sufficient particularity. The late Honorable George W. Folta sustained appellees' argument and denied appellant's Motion to Strike.

6. The appellees' Motions to Dismiss were consolidated for hearing (R 25, 44), and the Court convened on October 28, 1955 and heard arguments thereon (R 46).

7. On January 21, 1956, the District Court granted appellees' Motion to Dismiss the Complaint (R 69) for the reasons stated in its opinion (R 56-67).

8. On February 7, 1956, appellant filed Notice of Appeal from the Order of Dismissal to the United States Court of Appeals for the Ninth Circuit, and also its Statement of Points upon which appellant intended to rely (R 70-73).

9. On June 27, 1957, the decision of the District Court was affirmed by the United States Court of Appeals for the Ninth Circuit by a divided Court (R 77-91). The majority stated that four questions were presented by the appellant (R 80) and that the third question determined the issue. That question was whether the language in Section 2 of Chapter 22, Session Laws of Alaska 1953, which repealed the 1949 property tax act, constituted a special saving clause which nullified the Alaska General Saving Statute, which is Section 19-1-1 Alaskan Compiled Laws Anno-

tated, 1949. The majority held such was the case and that no liability against the appellees survived the repeal. It was also held that the District Court was correct in excluding from evidence House Bill No. 3 and Senate Bill No. 5, Twenty-first Session, Territory of Alaska Legislature, on the basis of *Trailmobile Company v. Whirls,* 1947, 331 U.S. 40, 60-61. (R 89.) The Court did not decide questions number one and number two (R 82) because they stated that the foregoing answers were determinative of the issue. Judge Healy, in dissenting (R 91), argued that the excluded Bills were material to show legislative intent and, further, that the special saving clause and the Alaska General Saving Statute could be read in pari materia. Judge Healy also pointed out that the application of a general saving clause must be negatived by the *express* terms or *clear* implication of a particular repealing act.

10. The appellant, the Territory of Alaska, filed a timely petition for rehearing on July 25, 1957 (R 92) which was denied on December 4, 1957 (R 94). In this petition, which has been certified as a portion of the record and filed in this Court, your appellant injected the issue of constitutionality which of necessity arose from the holding of the majority of the Court below. The present posture of the case indicates that, as the Court of Appeals has now interpreted the repealing act, it is unconstitutional, since it violates the Organic Act of the Territory of Alaska and the Fifth and Fourteenth Amendments of the United States Constitution.

SUMMARY OF ARGUMENT.

Where under a valid tax statute taxes from some have been collected, the Legislature cannot constitutionally discriminate against, and deny the equal protection of the laws to, the taxpayers who have paid by remitting by repeal the liability of those who have not paid. Such action would violate the historic requirement of equality of taxation.

To apply the rules of statutory construction, an ambiguity must exist as here. In such case the ambiguity must be resolved in favor of a constitutional construction as against a construction of doubtful validity, in favor of a fair and equitable result, against tax forgiveness by implication, and against permitting a special saving clause to override a general saving clause unless by express terms or clear implication.

When an ambiguity exists as to the construction of a statute, the Courts can ignore no avenue of information. Where a bill is introduced with a section which provides for positive action and the Legislature deletes the section and later substitutes another section providing a different action, the original bill and original section may be admitted into evidence. The fact that the rejection and substitution were done without legislative comment goes only to the weight of the evidence and not to its admissibility.

ARGUMENT.

I.

THE CONSTRUCTION OF THE REPEAL FOUND IN CHAPTER 22, SLA 1949, MAKES THE STATUTE UNCONSTITUTIONAL SINCE SUCH A RESULT REMITS THE TAXES OF THOSE WHO ARE DELINQUENT TO THE DETRIMENT OF THOSE WHO HAVE PAID THEIR TAXES. THE TAX BURDEN IS UNEQUAL AND VIOLATES THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES AND RUNS ADVERSE TO SECTION 9 OF THE ORGANIC ACT OF THE TERRITORY OF ALASKA, 48 U.S.C. 78, § 48-1-1, ACLA 1948.

At the onset, leaving aside for the time being the Territory of Alaska's attack on the construction placed on Chapter 22 by the Court below, Petitioner feels that the underlying malignancy of Chapter 22 as so construed should be presented to the Court. By reviewing the flat result of the preceding litigation, the problem can best be observed.

The District Court supported by the Court of Appeals has stated that where 11,504 people have paid over $400,000.00 under a valid tax law[1] the Legislature of the Territory of Alaska not only has the power to, but did forgive over 8,689 delinquent taxpayers (whose situation is identical with those who paid) their justly owing taxes in excess of $1,290,000.00. The only feature which distinguishes one group from the other is that the forgiven group was delinquent. The group who paid have no recourse, having voluntarily, under the valid law, come forth to pay their share of the tax burden.

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[1] *Hess v. Mullaney*, 91 F. Supp. 139, reversed in *Mullaney v. Hess*, 189 F.2d 417; *Hess v. Mullaney*, 102 F. Supp. 430, sustained in *Hess v. Mullaney*, 213 F.2d 635.

Petitioner contends that there is no reported case in the common law where such a decision can be fairly and indistinguishably said to stand as precedent for the aforestated result.

Such a construction makes the act unconstitutional notwithstanding that the statute in question is a repealing act which *forgives* the tax as to one class, rather than a taxing statute which *exempts* a particular class. The effect is the same and constitutional limitations, whether operating by way of grant or limitation, are to be enforced according to their letter and spirit and cannot be evaded by any legislation which seeks to accomplish indirectly that which cannot be done directly. *Macallen Co. v. Massachusetts,* 279 U.S. 620 (1929).

Your Petitioner earnestly agrees with the proposition expressed by the Supreme Court of Florida in *Simpson, County Tax Collector v. Warren,* 106 Fla. 688, 143 So. 602, 603:

> "Where a statute which provides for the collection of a particular tax is valid, and taxes from some have been collected under it, the Legislature is without power to unconstitutionally discriminate against, and deny the equal protection of the laws to the class of taxpayers who have already paid such tax while the statute was in force, by arbitrarily remitting or wiping out by repeal of the statute or otherwise the liability of those who have by their delinquency evaded or postponed payment for the time being."

and, further, with that in *State v. Butts,* 111 Fla. 630, 149 So. 746, 755:

"It cannot well be denied that, when the proper tax officers have legally placed upon each individual his share of the public burden of taxation, the Legislature of the state has no right to lift it from him to the prejudice of other taxpayers, or to the detriment of the public credit, either in the form of an abatement before, or in the form of a gift after, collection, or by a return to the taxpayer unburden his forfeited property, for this being done, a deficiency results in the public revenues which must be supplied by the imposition of additional tax assessments and levies upon the nonfavored class, thereby violating the fundamental constitutional requirement of all taxation, which is that it shall bear equally upon all, with special privileges to none."

Similar views are found in the following:

Sheppard, et al. v. Hidalgo County, et al., 125 Tex. 294, 83 S.W. 2d 649, 653;

Lincoln Mtg. and Trust Co. v. Davis, 76 Kan. 639, 92 P. 707;

State ex rel. Coe v. Fyler, 48 Conn. 145;

State v. Armstrong, 17 Utah 166, 53 P. 981.

In both *Richey v. Wells*, 123 Fla. 284, 166 So. 817, and *State, ex rel. Kain v. Fischl, County Treasurer*, 94 Mont. 92, 20 P. 2d 1057 (later overruled on different grounds), the respective courts declared that the selection and classifying of delinquent taxpayers as beneficiaries of special tax concessions without the same benefits being equivalently available to non-delinquent taxpayers violated the *Federal Constitution.*

More often remissions of taxes are denied under various *State* constitutional provisions such as requirements of uniform taxation and equal protection: *Huntington v. Worthen and Little Rock and Fort Smith Railway v. Worthen*, 120 U.S. 97 (1887); *Thompson v. Auditor General*, 261 Mich. 624, 247 N.W. 360; *Ranger Realty Co. v. Miller*, 102 Fla. 378, 136 So. 546; *State, ex rel. Matteson v. Luecke*, 194 Minn. 246, 260 N.W. 206; *State, ex rel. Hostetter v. Hunt*, 132 Ohio St. 568, 9 N.E. 2d 676; *St. Lucie Estates v. Ashley*, 105 Fla. 534, 141 So. 738; *State, ex rel. Coe v. Fyler, supra; State v. Armstrong, supra.*

Generally, where the remission of accrued taxes is permitted, it is permitted because the remission is uniform upon all taxpayers, *Clements v. Peerless Woolen Mills*, 197 Ga. 296, 29 S.E. 2d 175, or that uncollectible or doubtful claims can be compromised, *Opinion of the Justices, No. 89*, 251 Ala. 96, 36 So. 2d 480, or that the classification is reasonable, *State, ex rel. Anderson v. Rayner*, 60 Idaho 706, 96 P. 2d 244; or that a remission of penalties and interest on delinquent taxes is permissible because the situation is distinguished from the case of remission of the tax itself, *State, ex rel. Sparling v. Hitsman*, 99 Mont. 521, 44 P. 2d 747, or because the goal sought was to return land which would bring less than the accumulated taxes and penalties at a forced sale to the tax rolls by permitting the sale of certificates at less than such value, and it was not shown that the taxpayer was favored in the sale of the certificates, *Ranger Realty Co. v. Miller, supra*, or that the non-

delinquent taxpayers are to receive credits for ad valorem special assessments paid by them but which are relieved as to delinquent taxpayers, *San Bernardino County v. Way*, 18 Cal. 2d 647, 117 P. 2d 354, and for other reasons distinguishable from the instant remission.

This Court, in *Illinois Central Railroad Co. v. Commonwealth of Kentucky*, 218 U.S. 551, 563 (1910), in denying that an assessment upon taxpayer violated the equal protection clause, stated:

> "It does not satisfactorily appear that other railroad corporations were not assessed in the same way or at the same time, or, assuming that they were so assessed, that they were not liable to pay the taxes accordingly."

The clear implication was that, had other taxpayers been relieved of payment, it would violate due process of law to tax taxpayers similarly situated.

The interpretation of the Court below makes Chapter 22 an unconstitutional act. The act, as interpreted, now constitutes a denial of due process and of equal protection of the laws under the Fifth and Fourteenth Amendments to the Federal Constitution. It further violates a provision of the Organic Act of the Territory of Alaska, 48 U.S.C. 78; § 48-1-1, ACLA 1949. Section 9 of the Organic Act provides:

> "All taxes shall be uniform on the same class of subjects and shall be levied and collected under general laws, and the assessments shall be according to the true and full value thereof, . . ."

II.

THE RULES OF STATUTORY CONSTRUCTION MAY BE APPLIED WHEN AMBIGUITY EXISTS.

Moving into the argument on the construction of Chapter 22 itself, Petitioner initiates its objection by four fundamental canons of construction.

(1) When an act is susceptible of more than one construction, one of which is of doubtful validity, the Courts should adopt the valid interpretation.

The first is based upon the preceding argument dealing with the constitutionality of the repeal. There is raised the well-established principle that where a statute is open to more than one construction, one of which would render it void or of doubtful validity, and the other is reasonable and in harmony with the constitution, then the one which sustains its validity will be adopted, *Anniston Mfg. Co. v. Davis,* 301 U.S. 337 (1937); *Porter v. Investors Syndicate,* 286 U.S. 461 (1932); *Miller v. Commonwealth,* 172 Va. 639, 2 S.E. 2d 343; *In re Seven Barrels of Wine,* 79 Fla. 1, 83 So. 627, 632. This rule compels a construction of the statute which does not remit the delinquent taxes.

(2) An unjust result is to be avoided in statutory construction.

The second is that a construction which creates an unfair and inequitable result should be avoided. *Knowlton v. Moore,* 178 U.S. 41, 77 (1900); *Lau Ow Bew v. United States,* 144 U.S. 47 (1892); 51 Am. Jur., Taxation, Sec. 315; 50 Am. Jur., Statutes, Secs. 368-371. Judge Healy pointed out in his dissenting opinion that "the legislation in the respects here in

question is fundamentally ambiguous, both in its meaning and in the motives inspiring its enactment." (R 91). In the majority opinion, this ambiguity was recognized in Section three (R 82-87) where it was found necessary to apply statutory construction aids. There can hardly be any doubt that Chapter 22, S.L.A. 1953, is a patently ambiguous statute and susceptible to at least two interpretations.

The rule of construction, that an ambiguous Statute should be construed to produce a fair and equitable result, is very clearly stated in 50 Am. Jur., Statutes, Section 370, as follows:

> "In the construction of a statute, considerations of what causes injustice may have potent influence. It is not to be supposed that the framers of a statute contemplated a violation of rules of natural justice, and it should not be presumed to have been within the legislative intent to enact a law having an unjust result. To the contrary, it is to be presumed that the legislature intended the law not to work an unjustice. Accordingly, it is a general rule that where a statute is ambiguous in terms and fairly susceptible of two constructions, the injustice which may follow one construction or the other may properly be considered, and the courts, to support their construction of a statute, frequently refer to the justice thereof, or to the injustice which would result from a different construction of the law . . . it is considered a reasonable and safe rule of construction to resolve any ambiguity in a statute in favor of a just or fair interpretation thereof, or in favor of such an interpretation as would promote and effectuate

> justice, and result in a fair application of the statute . . . Moreover, the fact that unjust results follow the literal application of the language of a statute justifies a search of the statute for further indications of legislative intent. On the ground that a technicality should not be permitted to override justice, the general intention of the legislature is generally held to control the strict letter of the statute where an adherence to the strict letter would lead to injustice . . ."

It can hardly be disputed that the construction of Chapter 22, S.L.A. 1953, given by the majority results in a miscarriage of justice. This injustice is perpetrated against law-abiding taxpayers who timely filed their tax returns and paid their taxes. It discriminates against these diligent law-abiding citizens in favor of those persons who failed or refused to pay their taxes in express violation of Chapter 10, SLA 1949.

It is appropriate to ask this question: Could the Territorial Legislature have intended to wipe out over $1,000,000.00 of fixed tax liability while at the same time retaining over $400,000.00 of known paid-in taxes from those taxpayers who complied with the law by paying their taxes fully and on time as required by Chapter 10? To ask such a question is to answer it.

It is inconceivable that the Legislature intended such an inequitable result. Viewing Chapter 22's enactment in light of the fact that House Bill No. 3 was amended by expressly deleting the clause which

would have clearly forgiven all back taxes, it is impossible to impute to the Legislature such an intent.

(3) Tax remissions are strictly construed and founded upon clear language.

The third applicable rule of statutory construction is also based upon the obvious ambiguity recognized both in the majority (R 82) and dissenting opinions (R 91). It is noted that there is no language in Chapter 22 expressly forgiving the payment of these taxes. It is well-established that tax forgiveness, including exemptions and remissions, is not obtained by implication but must be predicated upon clear, unmistakable language. *Great Northern Railroad Co. v. Minnesota,* 216 U.S. 206, 221 (1910); *Minot v. Philadelphia, Wilmington and Baltimore Railroad Co., William J. Clarke, et al.,* 18 Wall. 206 (1874); Cooley on Taxation, Vol. 2, 4th Ed., Sec. 672, p. 1403.

(4) A special saving clause does not override a general saving statute in the absence of express terms or clear implication.

The fourth rule of statutory construction is that cited by Judge Healy in his dissenting opinion (R 89). After lucidly setting out the propriety of the construction pressed for by Petitioner and noting the ambiguity of the statute, Judge Healy sets out the rule that a general saving clause preserving rights prior to a repeal shall apply ". . . unless such application is negatived by the express terms or clear implication of a particular repealing act." (R 91) *Hertz, Collector v. Woodman,* 218 U.S. 205 (1910); *Great Northern Railroad Co. v. United States,* 208 U.S. 452, 465 (1908).

The court of appeals stressed certain points in drawing the rope of logic to its frayed conclusion. First, the ambiguity of the subject repeal was acknowledged by citing *John J. Sesnon Co. v. United States*, 182 F 573, 576 (CCA 9th), certiorari denied, 220 U.S. 609 (1911), to the effect that:

> "Where doubt exists as to the meaning of the statute the title may be looked to for aid in its construction." (R 82).

Second, in citing the instances of application of the rule of superiority of a special saving clause over a general saving statute, the Court quotes that part of the opinion of *State v. Showers*, 34 Kan. 269, 8 P. 474 which in turn quotes that part of *Felt v. Felt*, 19 Wis. 196, which reads as follows:

> "It is familiar law that a later statute will operate as a repeal of a former, although it contains no express repeal, and even though its provisions are not absolutely repugnant to those of the former, *whenever it is obvious that the one was intended as a substitute for the other.*" (R 85). (Emphasis supplied).

At this point it is to be seen that the majority below has, twofold, predicated its reasoning first upon the fact that doubt exists as to the meaning of the special saving clause and second upon the rule that a general statute is overridden by a special where there is an *obvious* intent to substitute the latter for the former. Petitioner, if it may also be allowed the luxury of being obvious, advances the proposition that the doubtful is not that which is obvious. It is

hereby urged that the rule of the *Showers* case, *supra*, and its kindred, is inapplicable to the instant case by the reasoning disclosed in the majority opinion itself.

To the effect that the excerpt from the *Felt* case, *supra*, is no wayward selection from the case law of *Felt* and *Showers* as set out by the majority below, we find the following quotation by the Court from the *Showers* case, *supra:*

> "*. . . that in cases where the special saving clause could apply the general saving statute should have no operation.*" (R 85).

The emphasis of the foregoing excerpt was supplied by the majority below, but Petitioner would urge that the emphasis should be restricted as follows:

> ". . . that in *cases where the special saving clause could apply* the general saving statute should have no operation."

Petitioner so restricts the emphasis because the "cases" where the special saving clause could and does apply are the prospective, future, and additional savings to municipalities, schools and public utility districts for taxes which had and would accrue during the then current fiscal year. The general saving statute applied to "cases" of territorial taxes due and owing by reason of accrual prior to the current fiscal year. It is the later case we are considering and so it is submitted that this is not an instance where the special saving clause "could apply" so as to deny the operation of the general saving statute.

The majority in further support once again cites *Showers:*

> "If, however, the saving clause in section 19 of the act of 1885 was not intended by the legislature to cover the entire ground, and to be a substitute for the general saving statute so far as cases like this are concerned, then the saving clause contained in section 19 of the Act of 1885 has no office to perform, but is absolutely worthless, for the general saving clause would save all that it saves and very much more. Such an interpretation of the law as this would violate all proper canons of construction. It would in effect say that the legislature had done the very foolish thing of enacting a saving clause which can have no real operation at all, and can subserve no actual purpose whatever . . ."

The meaning of this is that the special saving clause is supreme if it covers the same ground as the general saving statute, since duplication is a foolishness not to be imputed to a legislature. However, your Petitioner has already indicated that the office of the special saving clause and the ground which it covers is different from the purposes of the general saving clause; one is prospective and one is retrospective.[2]

One final thought remains. That is that Chapter 22, SLA 1953, is not really a special saving clause at all as we ordinarily understand it. This was pointed out in *Knickerbocker Ice Co. v. Stewart,* 253 U.S. 149, 162 (1920).

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[2]See Judge Healy's dissent at the bottom of page 90 and the top of page 91 of the Record as to the reading of the two in pari materia.

> ". . . The usual function of a saving clause is to preserve something from immediate interference, —not to create; . . ."

And in 50 Am. Jur., Statutes § 527 in relation to general saving provisions, it is said that:

> ". . . They operate to make applicable in the designated situations the law as it existed before the repeal, . . ."

The very designation "saving clause" indicates a retrospective view. Only that which exists could be saved—that which is prospective is a creation. Thus it is the position of the Territory of Alaska that the "exception" found in Chapter 22, SLA 1953, is prospective, saving nothing that presently exists. The function of saving that which existed (i.e., accrued taxes) fell to the General Saving Statute, Section 19-1-1, ACLA 1949. (Appendix "L," p. 53).

III.

THE COURT WAS UNDER A DUTY TO MAKE USE OF ALL AVAILABLE INTERPRETATIONAL AIDS TO DETERMINE THE TRUE MEANING AND INTENT OF THE STATUTE.

The District Court examined the "history" of the passage of House Bill No. 3, which eventually became Chapter 22, by examining the House Journal of which it could take "judicial notice" (R 65). It is Petitioner's position that once having determined and established that an ambiguity existed, the District Court was then under a duty to make use of all available interpretational aids to ascertain the true

meaning and intent of the statute. Mere reference to the Territorial House Journal would not disclose the *full* history of the Act because of the very limited data contained therein.

Because of the particular circumstances existing in Alaska, the District Court should have considered any and all extrinsic aids which would help ascertain and establish the true legislative intent in passing Chapter 22, Session Laws of Alaska 1953, and should not have limited itself to only those matters of which it could take judicial notice.

Neither the Alaska Senate nor House Journals, maintained by the Legislature, can in any way be likened to the Congressional Record. This latter government-printed publication contains a verbatim and chronological entry of almost every proceeding in both Houses of the United States Congress, together with reports, comments, and other expressions of view declared openly or in writing by law-makers or committee members on the various bills being considered. Even recommendations and messages from persons in the judicial and executive branches of the Government are often included therein. Therefore, when a Court takes judicial notice of the Congressional Record, it is looking to a wealth of significant and pertinent data which promises to lend material aid in finding the true intent of the Congress in passing a particular statute.

Contrasted with the Congressional Record, the Alaska House and Senate Journals are almost void of helpful information. The Court's attention is

called to the history of House Bill No. 3 as it appears in the House Journal. (Appendices "B"-"K," pp. 30 and 52). No reason, apparent or otherwise, appears at any time for any course of action taken by either House of the Legislature. Recommendations by different committees are made without any discernible basis. No debates or arguments are recorded. The testimony of witnesses is unknown. The Journals simply record the title of a bill and a brief summary of the legislative action taken thereafter. No section or provision of law is ordinarily printed therein. At no time is the original measure or bill printed therein.

When a Court or jury is seeking to ascertain the existence or nonexistence of a fact, they are not restricted only to matters of which the Court may take "judicial note." In Volume 2, Sutherland's Statutory Construction, 3d Edition, 320, 321, Section 4505, the late Professor Sutherland admonished the Courts with these words of caution:

> "The preceding criticisms of present techniques in interpretations do not mean that the interpretive process can or should be left exclusively to intuition. The dangers of usurping the legislative function in the guise of interpretation are all too apparent. The criticisms merely insist that the formalisms of the present rules founded upon ninteenth century fallacies concerning meaning and language may effectively cloak judicial usurpation of legislative power. The substance of the criticism is this: independent juidicial determination arrived at exclusively from the reading of the words in the statute does not insure accurate interpretation and thus for the court

> to assert that the statute is clear and unambiguous is merely to assert that the statute as read by the court produces a result which is satisfactory to the court. It does not necessarily mean that as read it reflects the legislative intent."

It is fitting to initially examine the effect of the self-limitation imposed by the lower Court when it refused to consider evidentiary matter beyond that of which it could take judicial notice. For all purposes such a ruling restricted the sources of enlightenment to the Territorial House Journal.

From the above, it is evident that the lower Court has set a precedent which will shackle the judiciary in Alaska from considering any extrinsic evidence that will shed light on the intent of the Alaskan legislative body. It is wholly unreasonable and flies in the face of reality to say that the intent of the 1953 Territorial Legislature must be determined by looking to the House Journal, a publication giving little more than a sketch of what transpired during the legislative session.

It thus becomes imperative that extrinsic—or any proper evidence—be available to ascertain the intent of a legislature which inevitably is primarily made up of laymen. By "proper evidence" Petitioner means that type of proof which does not transcend the accepted rules of evidence. After all, "judicial notice" does no more than relieve a party from having to submit formal proof of a *fact* which has been established to be a matter of common knowledge. ***Mills v. Denver Tramway Corporation,*** (10th CCA) 155 F 2d 808. However, if an essential fact is not common

knowledge, no good reason is suggested why it cannot still be established by other competent and admissible evidence.

When accurate means of ascertaining intent are available, they should be considered. This is not so much a rule of law as a simple principle of logic, in that it assures reliability rather than speculation. Canons of construction of writings are merely designed to aid in determining the intent of the writer by objective methods. Far more rewarding it is to follow the precepts of the following:

Written or printed reports of legislative standing and special committees. Compare *Gooch v. United States,* 297 U.S. 124 (1936); *Church of Holy Trinity v. United States,* 143 U.S. 457, 464 (1892); *Hood Rubber Co. v. Commissioner of Corporations and Taxation,* 268 Mass. 355, 167 N.E. 670. Written or printed statements made by the draftsmen of the proposed bill, as to their understanding of its nature and effect. *United States v. Whyel,* 28 F. 2d 30 (CCA 3rd); and compare *United States v. Rehwald,* 44 F. 2d 663 (S.D. of California). Written or printed statements made by the executive branch of government while the legislators were considering related bills. See *Shelton Hotel Co. v. Bates,* 4 Wash. 498, 104 Pac. 2d 478. Written or printed opinions by the Attorney General made at a time when the bill was being considered. See *Red Canyon Sheep Co. v. Ickes,* 98 F. 2d 308; *Doyle v. Fox, et al.,* 234 F. 2d 830 (CCA 9th). Written or printed statements of witnesses or interested parties urging amendments or changes in the proposed bill. *Penn Mutual Life Insurance v.*

Lederer, 252 U.S. 523, 534 (1920); *Securities and Exchange Commission v. Robert Collier & Co.*, 76 F. 2d 939 (CCA 2d 1935).

If we accept Professor Sutherland's analysis that statutory construction is but a fact issue, and recognize that words are at best inexact tools of expression, then it should follow that all relevant aids, extrinsic or otherwise, should be sought in construing laws. *Harrison v. Northern Trust Co.*, 317 U.S. 476 (1943); *United States v. American Trucking Associations, Inc., et al.*, 310 U.S. 534 (1940). Particularly is this so where the exigencies and circumstances demand this approach as a practical matter. In such instances all legitimate and reasonable means should be used to arrive at the legislative intent and the sources of enlightenment should not be limited. As early as 1804 Chief Justice John Marshall of the Supreme Court of the United States stated:

> ". . . Where the intent is plain, nothing is left to construction. Where the mind labors to discover the design of the legislature, it seizes every thing from which aid can be derived; . . ." *United States v. Fisher, et al.*, 2 Cranch 358, 386 (1804).

(1) Because of the ambiguity of the statute and the direct bearing on the legislative intent, the Court should have considered the bill originally introduced and the amendments thereto, which preceded the final adoption of Chapter 22, SLA 1968.

As stated above, the Court refused to admit into evidence and examine the wording originally employed by the author of House Bill No. 3, which was the genesis of Chapter 22, Section 2 of that Bill, when initially introduced, read as follows:

"Section 2. That all accrued and unpaid taxes on real property and improvements, and personal property, boats and vessels, levied under the provisions of Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, are hereby cancelled, repealed and abrogated, and declared null and void."

with this title:

"An Act to repeal Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, and abrogating and repealing all accrued and unpaid taxes levied thereunder, and declaring an emergency."

As the legislative history reveals, House Bill No. 3 was introduced on January 27, 1953 (Appendix "B," p. 30). Within two days thereafter the Committee on Judiciary and Federal Relations reported this Bill back to the House with the recommendation that it "do pass" with the following amendments:

"The title be changed to read:

'An Act to repeal the Alaska Property Tax Act enacted by Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, and declaring an emergency.'

Section 2 of House Bill No. 3 be deleted." (Emphasis added.) (Appendix "C", p. 31.)

The Bill was then referred to the House Committee on Ways and Means. Within less than a week that Committee recommended that the changes suggested by the Judiciary Committee, including the deletion of Section 2 quoted above, be adopted. On February 11, 1953, the Bill was passed by the House

with the above changes. Thus, the issue of whether or not "all accrued and unpaid taxes" should be "cancelled, repealed and abrogated, and declared null and void" was squarely before the House and rejected in what must be interpreted as an intentional, deliberate and positive act of that body, clearly manifesting its refusal to excuse any unpaid property taxes due and owing prior to the year 1952 (Appendix "D", pp. 32-37).

When House Bill No. 3 reached the Alaska Senate on February 12 of that same year, it was referred to the Senate Committee on the Judiciary and Federal Relations (Appendix "E," p. 38). One week later that Committee returned the Bill with a recommendation that the following amendment be made:

> "Insert new Section 2 as follows:
> Section 2. Section 1 of this Act shall not be applicable to:
>
> (a) any taxes which have been levied and assessed by any municipality, school or public utility district under the provisions of Chapter 10, Session Laws of Alaska, 1949, as amended, or which are levied and assessed during the current fiscal year of such municipality, school or public utility district; and
>
> (b) any exemptions from the taxes referred to in sub-section (a) of this section, which have been granted under the provisions of Section 6(h) of Chapter 10, Session Laws of Alaska 1949." (Appendix "F," p. 39.)

No written report or accompanying memorandum appears in the House or Senate Journal suggesting why

this new section was introduced. Even if such document existed, it would not have appeared in the Legislative Journal, for such practice has not been adopted in Alaska as is self-evident by a mere cursory examination of either Journal.

House Bill No. 3 was thereafter referred to the Senate Committee on Taxation and Revenue (Appendix "G," p. 40) and subsequently returned without recommendation other than "that the amendments offered by the Judiciary Committee be adopted" (Appendix "H," pp. 41-42). Two days later the title was amended to include "excepting from repeal certain taxes and tax exemptions." There being no objection, this amendment was also adopted (Appendix "I," p. 43). The Bill passed the Senate in this form and upon being returned to the House the amendment inserted by the Senate was adopted with no objection (Appendix "J," pp. 44-51). Although the Bill was subsequently vetoed by the Governor, it passed when a two-thirds majority in each legislative House overrode the veto (Appendix "K," p. 52).

It is significant to notice at this time that Senate Bill No. 5, identical to House Bill No. 3 in its original form, was completely ignored and abandoned by the Senate, together with the language in Section 2 thereof which also sought to have cancelled, repealed and abrogated all "accrued and unpaid taxes."

In *Brooks v. United States*, 337 U.S. 49 (1949), an automobile in which two servicemen were riding was struck at a highway intersection by an army truck causing the death of one and personal injuries to the

other, under circumstances which, in the case of persons not members of the Armed Forces of the United States, would have given rise to a right of action against the sovereign under the Federal Tort Claims Act. It was contended by counsel for the United States that because the injured persons were servicemen they could not maintain an action under that Act. In refutation of this point, the attorney representing the injured surviving serviceman and the estate, called to the Court's attention the bills originally introduced in Congress, which numbered eighteen, all of which had originally contained exceptions denying recovery to members of the Armed Forces but which in the final act removed such exceptions. The effect of deleting the intended exceptions from the final enactment was discussed by this Court in the following language:

> "More than the language and framework of the act support this view. There were eighteen tort claims bills introduced in Congress between 1925 and 1935. All but two contained exceptions denying recovery to members of the armed forces. When the present Tort Claims Act was first introduced, the exception concerning servicemen had been dropped. What remained from previous bills was an exclusion of all claims for which compensation was provided by the World War Veterans Act of [June 7] 1924—43 Stat 607, c 320, 38 USCA § 421, 11 FCA title 38, § 421, compensation for injury or death occurring in the first World War. HR 181, 79th Cong—1st Sess. When HR 181 was incorporated into the Legislative Reorganization Act, the last vestige of the exclusion for members of the armed forces dis-

appeared. See also Note 1, Syracuse L Rev 87, 93, 94."

and see *Carey v. Donohue*, 240 U.S. 430, 437, (1916); *Kelm v. Chicago St. P. M. & O. Ry. Co.*, 206 F.2d 831, 833 (CCA 10th); *Nicholas v. Denver & R. G. W. R. Co.*, 195 F.2d 428, 432; *Burnham Hotel Co. v. City of Cheyenne*, 30 Wyo. 458, 222 Pac. 1; *Bender v. City of Fergus Falls*, 111 Minn. 66, 131 N.W. 849; *United Mutual Life Ins. Co. of Indianapolis, Indiana, v. State, ex. rel. Att. Gen.*, 194 Ark. 371, 108 S.W. 2d 484; *Crook, et al. v. Commonwealth*, 147 Va. 593, 136 S.E. 565, 567; *Ex parte Boehme*, 158 Tex. App. 778, 255 S.W. 2d 206.

In *Love v. Wilcox, et al.*, 119 Tex. 250, 28 S.W. 2d 515, the Supreme Court of Texas stated:

> "No court could justify putting into a statute by implication what both Houses of the Legislature had expressly rejected by decisive votes. . . . Once the legislative intent is ascertained, the duty of the court is plain. To refuse to enforce statutes in accordance with the true intent of the Legislature is an inexcusable breach of judicial duty, because an unwarranted interference with the exercise of lawful, legislative authority."

The original of House Bill No. 3 was on file with the Secretary of Alaska and a proper certified copy thereof was secured by appellant from that public official. The authenticity was at no time questioned. However, the Court refused to consider this important evidentiary matter solely on the grounds that it was a document of which judicial notice could not be taken. The changes made in House Bill No. 3 from

its original language to its final passage are extremely pertinent and cast a revealing light on the legislative intent. Moreover, the Senate's implied refusal to adopt language which would have excused the unpaid taxes, as was expressed in Senate Bill No. 5, also was deserving of great weight and should not have been ignored.

(2) The State v. Showers case as precedent.

The Court below rested its conclusion on the propriety of exclusion of House Bill No. 3 and Senate Bill No. 5 almost wholly upon the opinion of this Court in *Trailmobile Company v. Whirls*, 331 U.S. 40 (1946).

In that case this Court had before it an Act of Congress dealing with the period of time during which seniority rights of a re-employed serviceman after the war were guaranteed by Federal law. The Court refused to give weight to charges which were not only mute but which were also susceptible of different interpretations.

In the instant case the muteness of the legislative maneuvers is comparable to every bill ever passed by the Legislature of the Territory of Alaska. If this is to be a rule of law without exceptions, then Alaska will never be allowed any aids to interpretation until it can afford the luxury of a record similar to the Congressional Record.

When it is proven, as a fact, that a bill which proposes a certain action in express terms was rejected by the Legislature, then it cannot be doubted by a logical mind that some light is shed on the intent of the

Legislature. To the extent that the rejection is unexplained, questions could arise as to the exactitude of the legislative intent, but no one could argue that no aid is shown whatsoever.

Here is our situation. The original bill spelled out the exact result sought by Respondents. The Legislature considered and rejected the proposal. The present bill was adopted. Now a rule of construction rewrites the act to make it read exactly as it originally was written and as it was rejected.

Certainly Petitioner would urge that the consideration and rejection of the original bill by the Legislature forgiving the remission of taxes by express terms is conclusive on a Court's interpretation of the act—even though the muteness of the Legislature may detract from that conclusiveness in the minds of some. But Petitioner is hardly given a chance to so urge.

On the authority of the *Trailmobile* case, *supra*, which laid down a rule dealing with the *weight* to be given to certain evidence in the problem of statutory construction the lower Courts have coined a rule dealing with the *admissibility* of evidence.

Petitioner urges that this court consider the original bill as set out herein and give that weight to it which is due from a logical mind. The conclusion can be none other than that if the legislators had before them the question of remission of over $1,290,000.00 taxes and rejected such a remission, they would not have entrusted such a task (the remission) to statutory wording which required intricate judicial interpretation.

It might be here pointed out that it would be fantastic for a territorial legislature to release $1,290,000.00 by *ambiguous implication* when the total appropriation for the *biennium* at that session was $23,594,992.00 (see Chapter 141, SLA 1953). To say that the Legislature intended to remit a sum exceeding 10% of its annual expenditure by means of a statute requiring such challenging interpretation is to level an impossible charge of financial irresponsibility.

CONCLUSION.

It is respectfully submitted that the judgment of the Court below should be reversed because its construction of Chapter 22, SLA 1953, is erroneous or because the Act is unconstitutional.

Dated, Juneau, Alaska,
August 14, 1958.

Respectfully submitted,

J. GERALD WILLIAMS,
Attorney General of Alaska,
DAVID J. PREE,
Assistant Attorney General,
JACK O'HAIR ASHER,
Special Assistant Attorney General,
Counsel for Petitioner,
Territory of Alaska.

(Appendices Follow.)

Appendix "A"

CHAPTER 10, SESSION LAWS OF ALASKA, 1949.

Section 1. TITLE. This Act may be cited as the "Alaska Property Tax Act".

Section 2. DEFINITIONS. As used in this Act, the following words and terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

(a) The word "assessor" means an authorized representative of a Board of Assessment and Equalization designated to perform the duties of making assessments in a judicial division.

(b) The word "board" means a Board of Assessment and Equalization.

(c) The word "Collector" means the Tax Commissioner or his authorized representative, employee or agent designated by him.

(d) The word "division" means judicial division as understood and recognized in Alaska.

(e) The word "improvements" includes all buildings, structures, fences and additions erected upon or affixed to the land, whether or not the title of the land has been acquired by any particular person.

(f) The word "include", when used in a definition contained in this Act, shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(g) The word "person" means and includes any individual, trustee, receiver, firm, partnership, joint

venture, syndicate, association, corporation, trust, or any other group acting as a unit.

(h) The words "personalty" or "personal property" shall mean all machinery, equipment, household goods, and other tangible personal property which is located on or used in connection with particular land, or owned, possessed or used independently of any particular land.

(i) The word "property" means and includes real property, improvements, and personalty, as herein defined.

(j) The words "real property" or "land" mean any estate or interest therein, including permit or license rights, and improvements thereon, and shall include all timber or patented lands.

(k) The words "Tax Commissioner" means the Tax Commissioner of the Territory of Alaska.

(l) The words "tax lien" embrace liens for penalties, interest and costs as well as for unpaid taxes.

(m) The word "Territory" means the Territory of Alaska.

Section 3. LEVY OF TAX. For the calendar year of 1949, and each calendar year thereafter there is hereby levied, and there shall be assessed, collected and paid, a tax upon all real property and improvements and personal property in the Territory at the rate of one per centum of the true and full value thereof. For the purposes of this section the assessed value of unimproved, unpatented mining claims which are not producing, and nonproducing patented mining

claims upon which the improvements originally required for patent have become useless through deterioration, removal or otherwise, is hereby fixed at $500.00 per each 20 acres or fraction of each such claim, except that if the surface ground of any such claim is used for other than mining purposes and has a separate and independent value for such other purposes, the valuation as pertains to such nonmining uses and of improvements incidental to such uses shall be according to the full and true value thereof.

Section 4. TAX UPON PROPERTY WITHIN INCORPORATED CITIES AND DISTRICTS. The tax levied under the provisions of Section 3 upon the property within the limits of an incorporated city and town, independent school district or incorporated school district in the Territory shall be assessed, collected and enforced in the manner prescribed by the property tax law of the municipality or district, by and at the expense of the municipalities and districts prorated proportionately between each, provided that amounts levied but which prove uncollectible, and the cost of foreclosure on delinquent accounts shall be borne by the city or school and public utility district.

All of the tax levied under this Act which is so collected shall be remitted to such municipalities or school districts as follows:

(a) As to cities which are not a part of an independent school district the municipal tax collection authority shall turn the amount of tax collected over to the city treasurer.

(b) As to incorporated school districts the tax collectors thereof shall turn the amount of tax collected over to the district school board.

(c) As to cities which are part of an independent school district the amount of taxes collected shall be turned over to the city treasurer. The city treasurer is hereby authorized and empowered to turn over to the school board such part of the funds collected as may be determined by the city council from time to time necessary to efficiently carry on school functions in said school district. Such cities may assess and collect an additional tax on real and personal property situate in the said ctiies not to exceed the amount allowed by law, which tax shall be assessed and collected at the same time and in the same manner as the tax provided in Section 3 of this Act, which said funds shall be used by said cities for general municipal purposes. Regarding that part of independent school districts outside of town bounds, the tax collection authority therein shall turn the taxes collected over to the district school board; provided that the millage levy for school purposes shall be uniform within incorporated school districts whether said district includes another incorporated municipality or not and any unused remainder up to the maximum levy hereunder shall revert to the Territorial Treasurer except that portion collected within any incorporated municipality within the boundary of such school district in which case such remainder, unused for school purposes, shall revert to the treasury of the incorporated municipality in which it may be collected.

(d) Taxes collected hereunder within a public utility district shall be handled in a like manner to those collected in cities or other incorporated municipalities, including collection costs, remissions and school millage levy provisions as set forth herein.

(e) In all cases where such local units are to receive such tax collections, the local tax collection authority shall, upon delivery of the money as above set forth, obtain a receipt in duplicate therefor and forward the duplicate thereof to the Tax Commissioner. The time or times to be set for payment on account of such collection shall be prescribed by the Tax Commissioner. Such other accounting as may be indicated shall be made to the Tax Commissioner at such times and in such manner as may be prescribed by him.

The tax money so collected which remains after remissions have been made shall be transmitted to the Tax Commissioner at such intervals and in such manner as he shall direct, for deposit with the Treasurer, to be covered into the general fund of the Territory.

Section 5. TAX ON PROPERTY OUTSIDE INCORPORATED CITIES AND SCHOOL DISTRICTS. The tax levied under the provisions of Section 3 upon property outside the limits of an incorporated city, independent school district, or incorporated school district or public utility district in the Territory shall be assessed, collected and enforced as provided in this Act.

Section 6. EXEMPTIONS.

(a) Property shall be exempt from taxation hereunder when used exclusively for educational, religious or charitable purposes.

(b) The property of the United States, of the Territory, and of any municipal corporation, independent school district, incorporated school district, public utility district and association operating utilities under arrangement with the Rural Electrification Administration, shall be exempt hereunder.

(c) The personal property of any person to the value of $200.00 shall be exempt hereunder.

(d) The property of any organization not organized for business purposes, whose membership is composed entirely of the veterans of any wars of the United States, or the property of the auxiliary of any such organization, and all monies on deposit belonging to such organization shall be exempt hereunder, except any such property which produces rentals or profits for such organization.

(e) The laws exempting certain property from levy and sale on execution shall not apply to taxes levied hereunder or to the collection thereof.

(f) New industrial, commercial and business construction shall be exempt during the period of construction and until the plants or buildings are occupied or operated, but in no case shall this exemption exceed three taxable years from the time of beginning of construction. Modifications and repairs to existing structures shall not be considered new construction under this provision.

(g) All homesteads upon which entry has been made in accordance with the land laws of the United States shall be exempt from the date of entry until one year after the date upon which patent shall have been granted and final title acquired. Such exemption shall include all improvements upon such homesteads pertaining to residential or agricultural purposes.

(h) INDUSTRIAL INCENTIVE CLAUSE: The Tax Commissioner is authorized to grant incentive exemptions hereunder in the manner and to the extent hereinafter set forth:

(1) An exemption of one-half of the tax otherwise imposed hereunder, or such other lesser fraction thereof as the Tax Commissioner may deem to be a necessary and proper encouragement to new industry as hereinafter defined, for such period not exceeding 10 taxable years from the date production is commenced, upon new plants and buldings and other installations, real estate and equipment, as are constructed and procured by new industrial enterprises, as hereinafter defined, to manufacture or process products which constitute industry new to Alaska with resultant establishment of new payrolls in Alaska.

The terms "new industry" or "new industrial enterprises" as used herein shall mean undertakings for the purpose of manufacturing or processing products not manufactured or processed in Alaska on the effective date hereof and for which plants have not already been established in Alaska.

(2) The Tax Commissioner shall establish and promulgate general standards and rules conformable to this Act for determining the eligibility of applicants for exemptions hereunder, and the extent to which exemptions for such applicants respectively are to be granted, including such factors as: permanence of the industry involved; the amount of its capital investment; whether it is a seasonal or continuous operation; whether it will likely be marginal because of distance from principal markets; transportation costs and differential in cost of production in Alaska as compared to cost of productions elsewhere; the number of resident Alaskan workmen who will be given employment; and other pertinent factors, related to improving the economy of the Territory of Alaska. He shall also consider in each case the recommendation of the Divisional Board of Assessment of the division in which the new industry is proposed to be established, which recommendation shall be obtained by the applicant in advance of the application and attached thereto. After all such factors are taken into consideration, the decision of the Tax Commissioner shall be rendered, subject, however, to final approval of the Divisional Board of Assessment. If after studying the Tax Commissioner's findings and decisions, the said Board, acting by majority of its members, is unable to agree with said decision, it shall, after reasonable notice to the Tax Commission and the affected new industry, hold a hearing and make the decision, which shall be final, except that when such exemption decision expires, the position of the new industry may be re-evaluated and

extension granted within the maximum limits allowed hereunder, in the same manner as provided for the granting of the original exemption.

(3) All exemptions granted hereunder shall be negotiated and consummated prior to the initial commencement of production by the applicant.

(4) Exemptions granted by the Tax Commissioner hereunder shall be applicable within or without municipalities, school districts or public utility districts.

Section 7. RETURNS.

(a) On or before the 15th day of July in the year 1949, and on or before the 15th day of March in each year thereafter, every person shall submit in duplicate to the assessor of the judicial division, a return of his property, and of the property held or controlled by him in a representative capacity, in the manner prescribed in this Act, which return shall be based on values existing as of January 1 in the same year.

(b) In every case the person making the return shall state an address to which all notices required to be given to him under this Act may be mailed or delivered.

(c) The return shall show the nature, quantity, amount and value of the property, the place where the property is situated, and said return shall be in such form as the Tax Commissioner may prescribe, and shall be signed and verified by the person liable, or his or its authorized agent or representative.

Section 8. ADDITIONAL RETURNS. The assessor may, by notice in writing to any person by whom a return has been made require from him a further return containing additional details and more explicit particulars, and upon receipt of the notice that person shall comply fully with its requirements within thirty days after its receipt by him.

Section 9. POWER TO MAKE EXAMINATIONS.

(a) An assessor shall not be bound to accept as correct the return made by any person, but if he thinks it necessary or expedient, or if he suspects that a person who has not made a return is liable to assessment, he shall make an independent investigation as to the property of that person, and may make his own valuation and assessment of the taxable amount thereof, which will be prima facie good and sufficient for all legal purposes.

(b) For the purpose of such examination, the assessor, personally or by any deputy designated by him, may enter upon any premises and may examine any property thereon, and shall have access to and may examine all property records involved, and such person shall, upon request, furnish to the assessor or deputy every facility and assistance for the purposes of such examination.

(c) An assessor may in any case examine a person on oath or otherwise, and upon request of the assessor, the person shall attend and submit himself to examination by the assessor.

Section 10. INSPECTION OF RETURN. No return made by any person under this Act shall be open for inspection by any person except officers authorized by law to administer this Act, or upon an official investigation or proceedings in court, and any Territorial employee who violates said restriction by communicating any information obtained under the provisions of this Act, except such information as is required by law to be shown on the assessment rolls, or allows any person not legally entitled thereto to inspect or have access to any return made under the provisions of this Act shall be guilty of a misdemeanor punishable under the penalty clause of this Act, and shall be discharged from his office or employment and be ineligible to hold any public office or employment for the Territory for a period of two years thereafter.

Section 11. VALUATION. Property shall be assessed at its full and true value in money, as of January 1 of the assessment year. In determining the full and true value of property in money, the person making the return, or the assessor, as the case may be, shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value the price for which the property would sell at auction, or at a forced sale, either separately or in the aggregate with all of the property in the taxing district, but he shall value the property at such sum as he believes the same to be fairly worth in money at the time of assessment. The true value of property shall be

that value at which the property would generally be taken in payment of a just debt from a solvent debtor.

Section 12. ASSESSMENT. Every person shall be assessed and taxed annually on his property in the division in which the property is situated, and where any parcel of land is situated partly in one division and partly in another or partly within a municipality or school district and partly elsewhere, the assessment in respect of that parcel shall be made in the division or district within which the greater part of the property is situated. Real property and personalty shall be separately assessed.

Section 13. TO WHOM ASSESSED.

(a) Subject to subsection (b) and (c) of this section, property shall be assessed and taxed in the name of the owner or claimant or where the property is owned, occupied or claimed by two or more persons, it shall be assessed and taxed in the names of the owners, occupiers or claimants jointly.

(b) Where a verified statement is furnished showing that property has become the subject of a contract of sale or been leased by the owner to another person, the name of the other person shall be noted on the assessment roll and like notice of the assessment shall be sent to him as to the owner, in which case the taxes assessed in respect of the property may be received either from the owner or from the purchaser or tenant, or from any optionee, prospective distributee, purchaser or encumbrancer who desires to safeguard the title to the property.

(c) Land of the United States or the Territory which is held under any mining location, lease, license, agreement for sale, accepted application for purchase, or otherwise, shall be assessed and taxed in the name of the occupier according to the value of his interest therein (except as above modified in this Act with respect to certain mining claims); but no assessment or taxation in respect of land so held or occupied shall in any way affect the rights of the United States in the land.

(d) Where the property assessed is owned by two or more persons in undivided shares, each owner shall be assessed on the undivided interest at the proportion of the assessed value of the property that his undivided interest bears to the whole.

Section 14. CONTENT OF ASSESSMENT ROLL.

(a) The assessor of each division shall prepare an annual assessment roll for each division covering property outside of municipalities and school districts and public utility districts, after consideration of all returns made to him pursuant to this Act, and after careful inquiry from such sources as he may deem reliable. On the roll he shall enter the following particulars:

(1) the names and last known addresses of all persons with property liable to assessment and taxation;

(2) a description of all taxable property;

(3) the assessed value, quantity, or amount of said property and the taxes thereon;

(4) the arrears of taxes owing by any persons; and,

(5) any other information that may be required by the Tax Commissioner.

(b) It shall be a sufficient description of any property for the purposes of this Act, if there is entered on the assessment roll the best available short description of the property.

Section 15. ASSESSMENT NOTICE.

(a) The assessor, before completion of the assessment roll, shall give to every person named thereon a notice of assessment, showing the valuation and assessment of his property and the amount of taxes thereon, in such form as the Tax Commissioner may prescribe. At least 60 days must be allowed from date of such mailing within which to appeal to the Board against the assessment. He shall enter on the roll opposite the name of each person the date of giving the assessment notice which entry shall be prima facie evidence of the giving of the notice. On the back of each assessment notice shall be printed a brief summary for the information of the taxpayer, of the dates when the taxes are payable, delinquent, and subject to interest, dates when the Board will sit for equalization purposes, and any other particular specified by the Tax Commissioner.

(b) The assessment notice shall be directed to the person to whom it is to be given, and shall be sufficiently given if it is mailed by first class mail addressed to, or is delivered at, his address as last

known to the assessor; or, if the address is not known to the assessor, the notice may be mailed addressed to the person at the postoffice nearest to the place where the property is situated. The date on which the notice is so mailed or is so delivered for all purposes of this Act shall be deemed to be the date on which the notice is given.

Section 16. COMPLETION OF ASSESSMENT ROLL. The assessor shall complete the annual assessment roll for the year 1949 on or before the 1st day of September and for each year thereafter on or before the 1st day of July of that year, which shall be based on values of January 1st immediately preceding, and shall certify the same by attaching thereto a certificate in a form to be prescribed by the Tax Commissioner. Such supplement assessment rolls shall be prepared and certified as may be deemed necessary or expedient.

Section 17. EFFECT OF ASSESSMENT ROLL. All taxes to be levied or collected under this Act shall, except as otherwise provided, be calculated, levied and collected upon the assessments entered in the assessment rolls and certified by the respective assessors as correct, subject to the taxpayers' rights of appeal and to the corrections and amendments made in the rolls pursuant to this Act.

Section 18. PROVISIONS APPLICABLE TO SUPPLEMENTARY ROLLS. All the duties imposed upon the assessor with respect to the annual assessment roll and all the provisions of this Act

relating to assessment rolls shall, so far as applicable, apply to supplementary assessment rolls.

Section 19. CORRECTION OF ERRORS BY ASSESSOR. Any assessor may correct any error, omission or invalidity made or arising in the preparation of the assessment roll at any time before the sitting of the Board. It shall be the duty of every person receiving a notice of assessment to advise the assessor of any error, omission or invalidity he may have observed in the assessment of his property, in order that the assessor may correct the same.

Section 20. TRANSMISSION OF ROLL TO THE TAX COMMISSIONER.

(a) A copy of all assessment rolls shall be certified and transmitted to the Tax Commissioner at Juneau not later than one month after the completion of same unless the time for transmission is extended by the Tax Commissioner. This shall be in addition to deposit of the assessment roll for retention in the division as required in Section 22.

(b) All corrections and amendments made in the roll pursuant to this Act or the decisions of the Board or the courts, and which are not shown on the assessment roll deposited with the collector or upon the copy transmitted to the Tax Commissioner at Juneau, shall be forthwith reported to the collector by the assessor.

Section 21. VALIDITY OF ASSESSMENT ROLLS. Every assessment roll as completed and certified by the assessor, and as corrected and

amended by him from time to time in conformity with this Act and the decisions of the Board shall, except insofar as the same may be further amended on appeal to the court, be valid and binding on all persons, notwithstanding any defect, error, omission or invalidity existing in the assessment roll or any part thereof, and notwithstanding any proceedings pertaining thereto.

Section 22. DEPOSIT OF ROLL WITH COLLECTOR. Upon a completed assessment roll being amended by the assessor in conformity with the decisions of his Board, the assessor shall deliver the roll to the collector, for retention in the division to which it applies, and the roll shall be open during office hours to the inspection of all taxpayers of the division.

Section 23. SITTINGS AND RECORDS OF BOARD. For the purpose of scrutinizing the assessment roll and its supplements, and taking corrective action thereon, or for hearing appeals in respect of any assessment rolls, or from any assessment made under this Act, the Board in each division shall sit and adjourn from time to time as its business may require, and shall record its proceedings and decisions. During all periods when a Board is not in session, its records and decisions shall be kept by the assessor.

Section 24. NOTICES BY BOARD.

(a) Where the name of any person is ordered by the Board to be entered on the assessment roll, by way of addition or substitution, for the purpose of

assessment, the Board shall cause notice thereof to be mailed by the assessor to that person or his agent in like manner as provided in Section 15, giving him at least 60 days from the date of such mailing within which to appeal to the Board against the assessment.

(b) Whenever it appears to the Board that there are overcharges or errors or invalidities in the assessment roll, or in any of the proceedings leading up to or subsequent to the completion of the roll, and there is no appeal before the Board in which the same may be dealt with, the Board may notify parties affected with the view of hearing them.

Section 25. APPEAL BY PERSON ASSESSED.

(a) Any person whose name appears on the assessment roll for any division or who is assessed in any district, may appeal to the Board with respect to any alleged overcharge, error, omission or neglect of the assessor.

(b) Notice of appeal, in writing, shall be filed with the Board within 60 days after the date on which the assessor's notice of assessment was given to the person appealing. Such notice must contain a certification that a true copy thereof was mailed or delivered to the assessor. If notice of appeal is not given within that period, right of appeal shall cease, unless it is shown to the satisfaction of the Board that the taxpayer was unable to appeal within the time so limited.

(c) A copy of the notice of appeal must be sent to the assessor as above indicated.

Section 26. APPEAL RECORD. Upon receipt of the notice of appeal, the assessor shall make a record of the same in such form as the Tax Commissioner may direct, which record shall contain all the information shown on the assessment roll in respect of the subject matter of the appeal, and the assessor shall place the same before the Board from time to time as may be required by the Board.

Section 27. NOTICE OF HEARING. Not less than 30 days before the sittings at which the appeal is to be heard, the Board shall cause a notice to be mailed by the assessor to the person by whom the notice of appeal was given, and to every other person in respect of whom the appeal is taken, to their respective addresses as last known to the assessor. The form of such notice shall be prescribed by the Tax Commissioner.

Section 28. HEARING OF APPEAL.

(a) At the time appointed for the hearing of the appeal, the Board shall hear the appellant, the assessor, other parties to the appeal and their witnesses, and consider the testimony and evidence adduced, and shall determine the matters in question on the merits and render its decision accordingly.

(b) If any party to whom notice was mailed as above set forth fail to appear, the Board may proceed with the hearing in his absence.

(c) The burden of proof in all cases shall be upon the party appealing.

Section 29. ENTRY OF DECISIONS. The Board shall from time to time enter in the appeal record its decisions upon appeals brought before it, and shall certify to the same. The assessor, upon receipt of the appeal record, and subject in every case to any appeal taken to the courts, shall enter in the assessment roll such amendments as may be necessary to give effect to the decisions of the Board.

Section 30. COLLECTION UNAFFECTED BY APPEAL. Neither the giving of a notice of appeal by any taxpayer, nor any delay in the hearing of the appeal by the Board shall in any way affect the due date, the delinquency date, the interest, or any liability for payment provided by this Act in respect of any tax which is the subject matter of the appeal. In the event of the tax being set aside or reduced by the Board on appeal, the Tax Commissioner shall refund to the taxpayer the amount of the tax or excess tax paid by him, and of any interest imposed and paid on any such tax or excess.

Section 31. APPEAL TO COURT. Any person feeling aggrieved by any order of the Board shall have the right of appeal on a de novo basis to the District Court for the Territory of Alaska in the division in which the matter is pending. Such appeal shall be pursued as nearly as may be in accordance with the procedure prescribed in Sections 68-9-4 to 68-9-14 inclusive, Alaska Compiled Laws Annotated 1949, governing appeals from a Justice's Court in civil cases and the Tax Commissioner shall promul-

gate uniform regulations adapting the above referenced procedure for perfecting such appeals.

Section 32. TIME OF PAYMENT. Taxes for a calendar year shall be payable annually the first day of February of the ensuing year. Failure to pay on said due date shall cause the tax to become delinquent and shall subject the property assessed to the interest and penalty additions hereinafter provided. Payments of taxes may be made at any time before their due date, but no discount shall be allowed for such early payment.

Section 33. MODE OF PAYMENT. All taxes payable under this Act shall be paid in lawful money of the United States or its equivalent, at the office of the collector in the judicial division in which same are due.

Section 34. LIEN.

(a) The taxes assessed upon property, together with interest and penalty, shall be a lien thereon from and after assessment until paid, and no sale or transfer of such property shall in any way affect the lien of such taxes.

(b) Liens for taxes hereunder shall be first liens and paramount to all prior and subsequent encumbrances, alienations and descents of the property.

Section 35. INTEREST.

(a) For failure to pay taxes when due, interest inclusive of penalty at the rate of one per cent per month shall be added on the first of each month until

the tax is paid or the property sold hereunder, but not to exceed the legal rate of interest in the aggregate.

(b) Where a tax becomes payable in respect to property assessed on a supplementary assessment roll, the like interest shall be added to and recovered as a part of the tax as might have been imposed if the return and the assessment had been made at the time prescribed by this Act and the tax had been duly levied and had not been paid.

Section 36. FAILURE OR REFUSAL TO COMPLY WITH ACT. Every person who, without reasonable excuse, in violation of any provision of this Act or of the regulations made thereunder—

(a) refuses or fails to make any return required to be made; or,

(b) in the making of any return, or otherwise, wilfully withholds any information necessary for ascertaining the true taxable amount of any property; or,

(c) refuses or fails to furnish to the assessor or his employee or agent any access, facility, or assistance required for the purpose of an entry on or examination of property or records; or,

(d) refuses or fails to attend or submit himself to examination on oath or otherwise by the assessor, the Board or the Tax Commissioner when duly cited so to do;—shall, in addition to penalties otherwise prescribed herein, be guilty of an offense against this Act.

Section 37. FALSE RETURNS AND RECORDS. Every person who knowingly and wilfully makes any false or deceptive statement in any return required to be made under this Act, or fraudulently omits to give therein a full and correct statement of the property of the taxpayer, or makes or keeps any false entry or record in any book of account or record required to be kept under this Act, shall be liable, on conviction, to a fine of not less than One Hundred Dollars and not more than One Thousand Dollars.

Section 38. DEFACING POSTED NOTICES. Every person who, without reasonable excuse, tears down, injures or defaces any advertisement, notice or document which, under the authority of this Act or the regulations made thereunder, is posted in a public place, shall be guilty of an offense against this Act.

Section 39. PENALTY FOR OFFENSES. Every person guilty of an offense against this Act for which no other penalty is specifically provided, shall be liable, on conviction, for a first offense to a fine not exceeding Five Hundred Dollars, and for a second or subsequent offense to a fine of not less than One Hundred Dollars and not more than One Thousand Dollars.

Section 40. LIABILITY OF CORPORATE OFFICERS, ETC. Every director, manager, secretary or other officer of a corporation or association, and every member of a partnership or syndicate, who knowingly and wilfully authorizes or permits any act,

default, or refusal which would subject the organization to criminal liability hereunder, shall be likewise personally guilty of such offense.

Section 41. PROSECUTIONS. Prosecutions hereunder for imposing of fines shall be at the instance of the Tax Commissioner and be brought in the name of the Territory.

Section 42. RECOVERY OF UNPAID LIENS. On or after the first day of April of any year, the Tax Commissioner may, with the assistance of the Attorney General, file in the office of the clerk of the district court in the division in which property subject to delinquent taxes is situated, a list of all parcels affected by unpaid liens. Thereafter the Tax Commissioner shall, unless the matter be otherwise resolved, proceed to foreclosure of said liens in substantially the manner prescribed in Sections 22-2-8 to 22-2-18, both inclusive, of Alaska Compiled Laws Annotated 1949, for the foreclosure of land registration liens, and all pertinent provisions of said sections are hereby adopted as applicable hereto.

Section 43. BOARDS OF ASSESSMENT AND EQUALIZATION.

(a) There is hereby created and established for each judicial division a Board of Assessment and Equalization.

(b) Each Board shall consist of three members appointed by the Governor subject to confirmation by the majority of the members of both Houses convened in Joint Session, provided, however, that per-

sons appointed may perform the duties of their offices until action by the ensuing Legislature is taken either confirming or rejecting such appointments.

(1) Board members shall be appointed solely on the grounds of fitness to perform the duties of the office.

(2) In the event of a vacancy on any Board, a successor shall be appointed to serve for the balance of the unexpired term.

(c) The term of each Board member shall be six years, except as hereinafter provided, but any person duly appointed and qualified shall hold office until his successor is appointed and qualified. No Board member shall be eligible to serve more than one six-year term.

(1) The terms of the members first appointed for each Board shall begin when they are appointed and qualified and shall continue for the following periods: one until March 31, 1951, one until March 31, 1953, and one until March 31, 1955.

(2) A Board member may be removed from office by the Governor after notice and opportunity for hearing, upon grounds of inefficiency, neglect of duty, malfeasance in office, but for no other cause whatever.

(d) The principal offices of the respective Boards shall be located in the following cities: for the First Judicial Division at Juneau, for the Second Judicial Division at Nome, for the Third Judicial Division at Anchorage, and for the Fourth Judicial Division at Fairbanks.

(e) The compensation of each Board member shall be $15.00 for each day actually spent in the performance of his duties, including all the time away from his place of residence in connection therewith, together with per diem and travel expense payable in accordance with vouchers issued by the Tax Commissioner.

(f) Each Board, within its judicial division, shall have the power and duty, subject to the approval of the Tax Commissioner as to all expenses of Board operations, to:——

(1) Exercise general supervision and direct the activities of assessment and equalization of property taxes;

(2) select an employee or employees or enter into contracts with qualified persons to perform the functions of appraiser and assessor; provided, that persons so appointed shall have the technical and other qualifications prescribed by the Tax Commissioner, and be engaged at rates of compensation prescribed by the Tax Commissioner;

(3) keep an accurate and complete record of all Board business, orders and processes, which records shall be open to public inspection at all reasonable times;

(4) hold hearings and conduct investigations required in the administration of the assessment provisions of this Act and hear and determine appeals involving assessment of property, at such points in their respective divisions as will serve the general

convenience of the public, provided that written minutes may be kept of the testimony of witnesses without making a word by word record thereof;

(5) require attendance of witnesses and production of all necessary evidence at any hearings and administer oaths in the course of investigations conducted or hearings held pursuant to the provisions of this Act;

(6) require such searches and appraisements by the assessor as the Board sees fit;

(7) require officers and employees of incorporated cities and districts to furnish such information concerning assessment and equalization of property taxes as is deemed necessary;

(8) perform all duties specifically imposed and exercise all powers conferred upon the Board.

Section 44. TAX COMMISSIONER. The Tax Commissioner shall be the collector of taxes levied under this Act and enforce collections with the aid of such divisional collectors or other deputy collectors and personnel as he may see fit to appoint. He shall administer all provisions of this Act except those specifically assigned to a Board or under the purview of municipal or school district authority. The Tax Commissioner shall prescribe and furnish all necessary forms, and promulgate and publish all needful rules and regulations conformable herewith for the assessment and collection of any tax herein imposed, and shall voucher for expenditures according to law.

Section 45. SEVERABILITY CLAUSE. If any provisions of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of the Act and such application to other persons or circumstances shall not be affected thereby.

Section 46. EMERGENCY CLAUSE. An emergency is hereby declared to exist and this Act shall take effect immediately upon its passage and approval.

Approved February 21, 1949.

Appendix "A" "I"

CHAPTER 88, SESSION LAWS OF ALASKA, 1949.

Section 1. Section 3 of the Alaska Property Tax Act which was House Bill No. 2 of this session of the Legislature, is hereby amended by adding thereto at the end thereof the following language:

With respect to any boat or vessel engaged in marine service on a commercial basis and subject to the provisions of this Act, the owner of said boat or vessel may elect:

(a) To pay the tax levied hereunder on such boat or vessel on the basis of the value thereof as defined herein, or,

(b) To pay $4.00 per net ton of such vessel's registered tonnage, but in any event the amount payable hereunder, for each such boat or vessel, shall not be less than $20.00 per annum.

Approved March 23, 1949.

Appendix "B"

HOUSE BILL NO. 3.

January 27, 1943, pg. 45

"HOUSE BILL NO. 3 by Mr. Hurley, entitled:

'An Act to repeal Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, and abrogating and repealing all accrued and unpaid taxes levied thereunder, and declaring an emergency.'

was introduced, read the first time and referred to the Committee on Judiciary and Federal Relations, to be later referred to the Ways and Means Committee."

Appendix "C"

January 29, 1953, pg. 103

"The Committee on Judiciary and Federal Relations reported HOUSE BILL NO. 3 back to the House with the recommendation that it do pass with the following amendments:

The title be changed to read:

'An Act to repeal the Alaska Property Tax Act enacted by Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, and declaring an emergency.'

Section 2 of HOUSE BILL NO. 3 be deleted.

The report was signed by Mr. Hurley, Chairman, and concurred in by Messrs. Eastaugh, Strainger and Pollock; Mr. Kay recommending that it do not pass.

HOUSE BILL NO. 3 was referred to the Committee on Ways and Means."

Appendix "D"

February 4, 1953, pg. 142

"The Committee on Ways and Means, to whom was referred HOUSE BILL NO. 3, reported the same back to the House with the recommendation that it do pass in accordance with amendments proposed by the Judiciary Committee. The report was signed by Mr. Johnson, Chairman, and concurred in by Messrs. Rutherford, Locken, Wilbur, McKinley, Boardman, Rentschler, Mrs. Bullock and Miss Prior.

HOUSE BILL NO. 3 was placed on the calendar for second reading."

February 5, 1953, pg. 152

"HOUSE BILL NO. 3 was read the second time.

At the request of Mr. Rutherford and by unanimous consent the following amendments to HOUSE BILL NO. 3, recommended by the Judiciary Committee, were adopted:

> Change the title to read: 'An Act to repeal the Alaska Property Tax Act enacted by Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, and declaring an emergency.'

Delete Section 2.

At the request of Mr. Hendrickson, Mr. H. L. Faulkner of Juneau was given the privilege of the floor to give information as to HOUSE BILL NO. 3.

It was moved by Mr. Greuel, seconded by Mr. Kay, that the following amendment to HOUSE BILL NO. 3, offered by Mr. Greuel, be adopted:

Delete emergency clause on lines 22, 23 and 25 and insert in its place: 'This Act shall become effective January 1, 1954.'

Change Title, deleting words 'and declaring an emergency.' and substitute 'and establishing an effective date.'

Motion lost.

HOUSE BILL NO. 3 was referred to Committee on Engrossment and Enrollment for engrossment."

February 7, 1953, pg. 175

"The Committee on Engrossment and Enrollment, to whom were referred * * * HOUSE BILL NO. 3, reported that it had found * * * HOUSE BILL NO. 3 correctly engrossed.

* * * HOUSE BILL NO. 3 was placed on calendar for third reading."

February 9, 1953, pg. 192

"It was moved by Mr. Boardman, seconded by Mr. Greuel, that HOUSE BILL NO. 3, on today's Calendar for third reading be re-committed to second reading for the following specific amendment offered by Mr. Boardman:

After word 'Repealed' on line 15, change the period to a semi-colon and add: 'provided, however, that all incentive exemptions granted by the Tax Commissioner under the provisions of subdivision (h), Section 6, Chapter 10, Session Laws of 1949, shall continue in full force and effect for the periods and under the terms contained therein, and all such exemptions which have been so granted within a city, school district or public utility district shall remain in full force

and effect and shall be binding upon the city, school district or public utility district where granted and apply to all municipal, school district and public utility district property taxes in the same manner as exemptions where intended to apply to Territorial property taxes levied by Chapter 10, Session Laws of 1949.'

Motion carried.

It was moved by Mr. Boardman, seconded by Mrs. Bullock, that the foregoing amendment be adopted.

It was moved by Mr. Eastaugh, seconded by Mr. Kay, that HOUSE BILL NO. 3 be continued in second reading. Motion carried."

February 10, 1953, pg. 203

"Second reading of HOUSE BILL NO. 3, continued.

The question before the House being, 'Shall the amendment to HOUSE BILL NO. 3, offered by Mr. Boardman, be adopted?' The roll was called with the following result:

Yeas, 11—Boardman, Bullock, Duffield, Eastaugh, Fagerstrom, Greuel, Hendrickson, Johnson, Kay, Olsen, Rentschler.

Nays, 13—Coghill, Dimock, Hurley, Locken, MacSpadden, McKinley, Pollock, Prior, Rutherford, Snodgrass, Stringer, Wilbur, Mr. Speaker.

Motion lost.

It was moved by Mr. Wilbur, seconded by Mr. Kay, that the Attorney General be requested to appear before the House to give information as to HOUSE

BILL NO. 3. The roll was called on the motion with the following result:

Yeas, 13—Boardman, Coghill, Duffield, Eastaugh, Fagerstrom, Greuel, Hendrickson, Johnson, Kay, Rentschler, Rutherford, Stringer, Wilbur.

Nays, 11—Bullock, Dimock, Hurley, Locken, MacSpadden, McKinley, Olsen, Pollock, Prior, Snodgrass, Mr. Speaker.

Motion carried. Mr. Kay thereupon gave notice of his intention to move a reconsideration of his vote on the motion."

* * * * * * *

"It was moved by Miss Prior, seconded by Mr. Wilbur, that the rules be suspended and the vote on Mr. Kay's reconsideration be taken immediately. The roll was called on the motion with the following result:

Yeas, 17—Bullock, Coghill, Dimock, Eastaugh, Hendrickson, Hurley, Johnson, MacSpadden, McKinley, Olsen, Prior, Rentschler, Rutherford, Snodgrass, Stringer, Wilbur, Mr. Speaker.

Nays, 7—Boardman, Duffield, Fagerstrom, Greuel, Kay, Locken, Pollock.

Motion carried.

The question being, 'Shall the Attorney General be requested to appear to give information as to HOUSE BILL NO. 3?' The roll was called with the following result:

Yeas, 14—Boardman, Bullock, Coghill, Eastaugh, Hendrickson, Johnson, Locken, McKinley, Olsen,

Rentschler, Rutherford, Stringer, Wilbur, Mr. Speaker.

Nays, 10—Dimock, Duffield, Ragerstrom, Greuel, Hurley, Kay, MacSpadden, Pollock, Prior, Snodgrass.

Motion carried and the Sergeant at Arms was instructed to request the Attorney General to appear before the House.

* * * * * * *

Attorney General, J. Gerald Williams, appeared before the House to answer questions with reference to HOUSE BILL NO. 3."

February 11, 1953, pg. 218

"Second reading of HOUSE BILL NO. 3 continued.

It was moved by Mr. Hurley, seconded by Miss Prior, that the rules be suspended as to HOUSE BILL NO. 3, that it be considered engrossed, read the third time and placed upon final passage. Motion carried.

HOUSE BILL NO. 3 was read the third time.

Upon motion by Miss Prior, seconded by Mrs. Bullock, the previous question was ordered. The question being, 'Shall the Bill pass?', the roll was called with the following result:

Yeas, 20—Boardman, Bullock, Coghill, Dimock, Eastaugh, Hendrickson, Hurley, Johnson, Locken, MacSpadden, McKinley, Olsen, Pollock, Prior, Rentschler, Rutherford, Snodgrass, Stringer, Wilbur, Mr. Speaker.

Nays, 4—Duffield, Fagerstrom, Greuel, Kay.

And so the Bill passed.

The question then being 'Shall the emergency clause be adopted, the roll was called with the following result:

Yeas, 20—Boardman, Bullock, Coghill, Dimock, Eastaugh, Hendrickson, Hurley, Johnson, Locken, MacSpadden, McKinley, Olsen, Pollock, Prior, Rentschler, Rutherford, Snodgrass, Stringer, Wilbur, Mr. Speaker.

Nays, 4—Duffield, Fagerstrom, Greuel, Kay.

And so the emergency clause was adopted.

There being no objection thereto, the title of the Bill was ordered to stand as to title of the Act.

HOUSE BILL NO. 3 had been reported correctly engrossed on February 7th and on February 9th had been re-committed to second reading for specific amendment. The specific amendment was not adopted, so the Speaker announced that he had signed HOUSE BILL NO. 3 and ordered the same sent to the Senate."

Appendix "E"

SENATE ACTION ON HOUSE BILL NO. 3

February 12, 1953, pg. 172

"HOUSE BILL NO. 3 by Mr. Hurley, entitled: 'An Act to repeal the Alaska Property Tax Act enacted by Chapter 10, Session Laws of Alaska, 1949, as amended by Chapter 88, Session Laws of Alaska, 1949, and declaring an emergency,'

was read the first time and referred to the Committee on Judiciary and Federal Relations."

Appendix "F"

February 19, 1953, pg. 244

The Committee on Judiciary and Federal Relations to whom was referred HOUSE BILL NO. 3 returned the same to the Senate with the report it had found HOUSE BILL NO. 3 in proper legal form and recommended the following amendments:

Insert new Section 2 as follows:

Section 2. Section 1 of this Act shall not be applicable to:

(a) any taxes which have been levied and assessed by any municipality, school or public utility district under the provisions of Chapter 10, Session Laws of Alaska 1949, as amended, or which are levied and assessed during the current fiscal year of such municipality, school or public utility district; and

(b) any exemptions from the taxes referred to in sub-section (a) of this section, which have been granted under the provisions of Section 6 (h) of Chapter 10, Session Laws of Alaska 1949.

The report was signed by Senator Stepovich, Chairman, and concurred in by Senators Jensen, Jones and Robison. HOUSE BILL NO. 3 was ordered placed on the Daily File for second reading."

Appendix "G"

February 20, 1953, pg. 261

"HOUSE BILL NO. 3 was read the second time.

Senator Egan asked unanimous consent to have HOUSE BILL NO. 3 re-submitted to the Committee on Taxation and Revenue.

Objection was voiced.

Senator Egan so moved; seconded by Senator Nolan.

The question being, 'Shall Senator Egan's motion to re-submit HOUSE BILL NO. 3 to the Committee on Taxation and Revenue pass?', the roll was called with the following result:

Yeas, 10—Barnes, Beltz, Butrovich, Coble, Egan, Engstrom, Ipalook, Lhamon, Lyng, Nolan.

Nays, 6—Gorsuch, Jensen, Robison, Snider, Stepovich, Mr. President.

And so the Motion carried, and HOUSE BILL NO. 3 was re-submitted to the Committee on Taxation and Revenue."

Appendix "H"

February 25, 1953, pg. 309

"The Committee on Taxation and Revenue reported HOUSE BILL NO. 3 back to the Senate without recommendation but that the amendments offered by the Judiciary Committee be adopted. The report was signed by Senator Engstrom, Chairman, and concurred in by Senators Lhamon and Ipalook; Senator Robison recommended that it do pass. HOUSE BILL NO. 3 was placed on the Daily File for second reading."

February 26, 1953, pg. 338

"HOUSE BILL NO. 3 was read the second time. Senator Stepovich asked unanimous consent for the adoption of the amendment offered by the Committee on Judiciary and Federal Relations as follows:

Insert new Section 2 as follows:

Section 2. Section 1 of this Act shall not be applicable to:

(a) any taxes which have been levied and assessed by any municipality, school or public utility district under the provisions of Chapter 10, Session Laws of Alaska 1949, as amended, or which are levied and assessed during the current fiscal year of such municipality, school or public utility district; and

(b) any exemptions from the taxes referred to in sub-section (a) of this section, which have been granted under the provisions of Section 6 (h) of Chapter 10, Session Laws of Alaska, 1949. Renumber present Section 2 to Section 3.

There being no objection, the amendments were adopted.

At the request of Senator Egan and with unanimous consent of the Senate, HOUSE BILL NO. 3 will be held in second reading for further amendments."

Appendix "I"

February 28, 1953, pg. 363

"HOUSE BILL NO. 3 was again considered in second reading.

The following amendment was offered by Senator Stepovich:

> Page 1, Line 9. After '1949' remove the comma, insert a semi-colon, and then add the following: 'excepting from repeal certain taxes and tax exemptions'.

Senator Stepovich asked unanimous consent for the adoption of the amendment. There being no objection, the amendment was adopted.

HOUSE BILL NO. 3 was referred to the Committee on Engrossment and Enrollment for engrossment."

Appendix "J"

March 3, 1953, pg. 383

"The Committee on Engrossment and Enrollment reported that it had found * * * HOUSE BILL NOS. * * * 3 * * * correctly engrossed. * * * HOUSE BILL NOS. * * * 3 * * * were placed on the General File."

March 5, 1953, pg. 435

"HOUSE BILL NO. 3 was read the third time.

At the request of Senator Snider and with unanimous consent of the Senate, Mr. H. L. Faulkner, Juneau attorney, was given the privilege of the floor to speak on HOUSE BILL NO. 3.

* * * * * * *

HOUSE BILL NO. 3 was continued and Mr. Faulkner concluded his talk on same.

Senator Egan asked unanimous consent of the Senate that the Attorney General of Alaska be heard on HOUSE BILL NO. 3. There being no objection, it was so ordered and the Senate recessed until the Attorney General was summoned.

* * * * * * *

HOUSE BILL NO. 3 (continued)

Attorney General J. Gerald Williams was given the privilege of the floor to speak on HOUSE BILL NO. 3.

* * * * * * *

HOUSE BILL NO. 3 (Continued).

Mr. A. J. ('Tiny') Chichoski, member of the United Fishermen of Alaska, from Kodiak, was heard on HOUSE BILL NO. 3.

Senator Barnes assumed the Chair to permit the President to be heard on HOUSE BILL NO. 3.

The President resumed the Chair.

The question being, 'Shall HOUSE BILL NO. 3 pass the Senate?', the roll was called with the following result:

Yeas, 10—Barnes, Coble, Gorsuch, Jensen, Lhamon, Lyng, Robison, Snider, Stepovich, Mr. President.

Nays, 6—Beltz, Butrovich, Egan, Engstrom, Ipalook, Nolan.

And so the Bill passed.

The secretary called the roll on the emergency clause with the following result:

Yeas, 12—Barnes, Butrovich, Coble, Engstrom, Gorsuch, Jensen, Lhamon, Lyng, Robison, Snider, Stepovich, Mr. President.

Nays, 4—Beltz, Egan, Ipalook, Nolan.

And so the emergency clause was adopted.

There being no objection thereto, the title of the Bill was ordered to stand as the title of the Act."

HOUSE ACTION ON HOUSE BILL NO. 3.

March 6, 1953, pg. 516

"A message from the Senate was read, transmitting HOUSE BILL NO. 3, which had passed the Senate with the following amendments:

Section 2. Section 1 of this Act shall not be applicable to:

(a) any taxes which have been levied and assessed by any municipality, school or public utility

district under the provisions of Chapter 10, Session Laws of Alaska 1949, as amended, or which are levied and assessed during the current fiscal year of such municipality, school or public utility district; and

(b) any exemptions from the taxes referred to in subsection (a) of this section, which have been granted under the provisions of Section 6(h) of Chapter 10, Session Laws of Alaska 1949.

Renumber present Section 2 to Section 3

Page 1, line 9, after '1949' remove the comma, insert semicolon, and add the following:

'excepting from repeal certain taxes and tax exemptions'.

It was moved by Mr. Rutherford, seconded by Mr. Eastaugh, that that House concur in Senate amendments to HOUSE BILL NO. 3. The roll was called on the motion with the following result:

Yeas, 22—Boardman, Bullock, Coghill, Dimock, Duffield, Eastaugh, Fagerstrom, Greuel, Hendrickson, Johnson, Locken, MacSpadden, McKinley, Olsen, Pollock, Prior, Rentschler, Rutherford, Snodgrass, Stringer, Wilbur, Mr. Speaker.

Nays, 1—Kay.

Absent, 1—Hurley.

And so the House concurred and HOUSE BILL NO. 3 was ordered enrolled."

March 7, 1953, pg. 525

"The Committee on Engrossment and Enrollment reported that it had found * * * HOUSE BILLS NOS. 3 * * * correctly enrolled. * * *

The Speaker announced that he had signed * * * HOUSE BILLS NOS. 3 * * * and ordered the same sent to the Senate for the signatures of the President and Secretary.

* * * * * * *

A message from the Senate was read transmitting the enrolled copies of * * * HOUSE BILLS NOS. 3 * * * signed by the President and Secretary. Said Bills were ordered sent to the Governor."

"The following message from the Governor was read:

March 11, 1953, pg. 580

'TERRITORY OF ALASKA
Office of the Governor
JUNEAU

March 11, 1953

Speaker of the House
Twenty-First Territorial Legislature
Juneau, Alaska

Dear Mr. Speaker:

In my message to the Legislature I touched generally on a few of the points which seemed to warrant retention of the property tax. Nor do I desire to repeat those in detail beyond mention that our well rounded tax structure, which has received expressions of approval from members of the Congress, will, if this tax is repealed, be no longer so well diversified, so well balanced, and so widely distributed if one of the three basic elements is removed. In addition, it may be noted that there is no place in the union where a real property tax is not levied, either by the state or its lesser subdivisions, or both, and few places where it is so low as 1%. Our sister Territory,

Hawaii, has an elaborate tax structure which features a tax on real property. In my Message I likewise referred to the fact that Congress looks to Alaska to participate increasingly in its own financing as a token of good faith, warranting continued federal expenditures in the Territory. Some of these expenditures, which we in Alaska consider essential, are now in jeopardy: we should do nothing further to jeopardize them. It is also apparent that despite our substantial surplus that the growing needs of the Territory are being recognized by this Legislature and that we are embarking on a perilous course if at the very outset of our era of growing population and expansion we rescind one important and substantial source of revenue. I would also like to stress the value of the property tax, beyond its revenue, in furnishing the Territory with the important machinery for determining and keeping current a record of property ownerships.

However, there is one entirely new point which I have not hitherto touched, which I feel the Legislature should consider. That is the matter of discrimination which would automatically follow repeal of the property tax.

In the fifteen year period, between 1934 and 1949—that is to say, before the enactment of the Territorial Property Tax—people living in municipalities and school districts were obliged to pay, by way of municipal and school district taxes, one-third of the cost of operating and maintaining their schools while the Territory contributed the remaining two-thirds. During this same period persons residing outside of cities or school districts paid no property taxes and thus con-

tributed nothing directly for the support of their schools. The entire cost of construction, repair, operation and maintenance, was borne by the Territory. This means that the people living in municipalities and school districts were paying not only for their own schools but through general taxation for the rural schools as well. A typical example of this discrimination, should the property tax be repealed, is called to my attention by Admiral (Squeaky) Anderson, who pointed out that the cannery which he operates within the city limits of Seldovia has been paying property taxes, while two other canneries just outside the local limits will, if the tax is repealed, make no such contribution. We may well ask whether such a practice is equitable and fair.

I have on hand also an unsolicited letter from a man with whom I am not personally acquainted, from Petersburg, who writes me as follows:

> "As a taxpayer of both real estate and of a documented vessel, taxable under the Alaska General Property Tax Act, I implore you to veto the bill recently passed by the Alaska Legislature repealing the General Property Tax. Speaking from personal experience I can truthfully say that this repeal act is not in accordance with wishes of the people in my community."

So the fact is that the repeal of the property tax will not remove any discrimination but will recreate one against all Alaskans living in urban and suburban communities. The real effect of the enactment of that law four years ago was to remove discrimination and to distribute more equitably the cost of government over all inhabitants in the Territory.

Those urban and suburban taxpayers constitute a substantial majority of the people of Alaska. By repeal of the property tax they will be discriminated against in favor of the far smaller number living outside of incorporated cities and school districts. It is difficult for me to justify so manifest an injustice.

It is therefore with regret that I am obliged to veto H. B. 3, an Act to Repeal the General Property Tax.

Sincerely yours,
s/ ERNEST GRUENING,
Governor of Alaska.'

Mr. Wilbur asked for a call of the House, and the Veto Message was made a first order of business at 11:00 A.M. today.

SPECIAL ORDER OF BUSINESS

The question now being, 'Shall HOUSE BILL NO. 3 pass the House notwithstanding the veto of the Governor?', the roll was called with the following result:

Yeas, 20—Boardman, Bullock, Coghill, Dimock, Eastaugh, Hendrickson, Hurley, Johnson, Locken, MacSpadden, McKinley, Olsen, Pollock, Prior, Rentschler, Rutherford, Snodgrass, Stringer, Wilbur, Mr. Speaker.

Nays, 4—Duffield, Fagerstrom, Greuel, Kay.

And so the Bill passed.

The question then being, 'Shall the emergency clause be adopted?', the roll was called with the following result:

Yeas, 20—Boardman, Bullock, Coghill, Dimock, Eastaugh, Hendrickson, Hurley, Johnson, Locken, MacSpadden, McKinley, Olsen, Pollock, Prior, Rentschler, Rutherford, Snodgrass, Stringer, Wilbur, Mr. Speaker.

Nays, 4—Duffield, Fagerstrom, Greuel, Kay.

And so the emergency clause was adopted.

The House having passed HOUSE BILL NO. 3 notwithstanding the veto of the Governor, the Chief Clerk was instructed to so advise the Senate."

SENATE ACTION ON GOVERNOR'S VETO ON H. B. NO. 3

March 12, 1953, pg. 561

"SENATOR Engstrom asked unanimous consent that the Rules be suspended and that HOUSE BILL NO. 3 and the Governor's Veto Message be considered at this time. There being no objection, it was so ordered.

* * * * * * *

Senator Engstrom moved that the Senate pass HOUSE BILL NO. 3, the Governor's veto notwithstanding, seconded by Senator Barnes.

The question being, 'Shall HOUSE BILL NO. 3, the Governor's veto notwithstanding, pass the Senate?', the roll was called with the following result:

Yeas, 11—Barnes, Coble, Engstrom, Gorsuch, Jensen, Lhamon, Lyng, Robison, Snider, Stepovich, Mr. President.

Nays, 4—Beltz, Butrovich, Egan, Nolan.

Not Voting, 1—Ipalook.

And so the Motion carried and the Bill passed, the Governor's veto notwithstanding.

The President ordered HOUSE BILL NO. 3 returned to the House."

Appendix "L"

SECTION 19-1-1 ALASKA COMPILED LAWS ANNOTATED, 1949, AS AMENDED BY CHAPTER 4 SLA—EX. SESSION, 1955.

"Section 1. Section 19-1-1 ACLA 1949 is hereby amended to read as follows:

Sec. 19-1-1. Effect of repeals or amendments. The repeal or amendment of any statute shall not affect any offense committed or any act done or right accruing or accrued or any action or proceeding had or commenced prior to such repeal or amendment; nor shall any penalty, forfeiture or liability incurred under such statute be released or extinguished, but the same may be enforced, continued, sustained, prosecuted and punished under the repealing or amendatory statute save as limited by the ex post facto and other provisions of the Constitution, in which event the same may be enforced, continued, sustained, prosecuted and punished under the former law as if such repeal or amendment had not been made. When any act repealing a former act, section or provision shall be itself repealed, such repeal shall not be construed to revive such former act, section, or provision, unless it shall be expressly so provided."